

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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A.W. FINANCIAL SERVICES, S.A., as successor :  
in interest to TERTIAIRE INVESTISSEMENT, :  
S.A., :  
: Plaintiff, : 07 CIV 8491 (SHS) (RLE)  
: - against - :  
: EMPIRE RESOURCES, INC., AMERICAN :  
STOCK TRANSFER & TRUST COMPANY, :  
and AFFILIATED COMPUTER SERVICES, INC., :  
: Defendants. :  
-----x

**DECLARATION OF DEBORAH A. MAHER  
IN SUPPORT OF DEFENDANT EMPIRE RESOURCES, INC.'S  
MOTION TO DISMISS THE AMENDED COMPLAINT**

I, Deborah A. Maher, declare under 28 U.S.C. § 1746:

1. I am an attorney admitted to practice before this Court and an associate at Weil, Gotshal & Manges LLP, attorneys for defendant Empire Resources, Inc. ("Empire"). I submit this declaration in support of Empire's motion to dismiss the Amended Complaint filed by A.W. Financial Services, S.A. (the "Motion").

2. Attached as Exhibit 1 hereto is a true and correct copy of the Affidavit of Loss and Indemnity Agreement executed by Tertiaire Investissement, S.A. dated May 22, 2000.

Dated: New York, New York  
May 2, 2008

Deborah A. Maher  
Deborah A. Maher (DM-9333)  
767 Fifth Avenue  
New York, NY 10153  
212 310-8000 (Telephone)  
212 310-8007 (Fax)

## **EXHIBIT 1**

**AFFIDAVIT OF LOSS AND INDEMNITY AGREEMENT**

STATE OF FRANCE)

ss.)

COUNTY OF PARIS)

(1) Deponent (PRINT NAME) TERTIAIRE INVESTISSEMENT is of legal age and resides  
at Presently Known as TERTIAIRE DEVELOPPEMENT SA.

Please check here if this is a permanent address change.

Home Tel. No. 47 Rue de CHAILLOT PARIS 75116 Work Tel. No. Tel : 01 56 62 21 00

Driver's License

#

Occupation Investment Company.

And Employer's Name &  
Address \_\_\_\_\_

Deponent is the owner of or is acting in a representative or fiduciary capacity with respect to certain  
Securities (Describe the type of security, identification number and number of face value.):

CERT. NO (S): IT 0000065

(hereinafter called the "Original"),

ISSUED BY: (Name of Stock):

(hereinafter called the "Issuing Corporation"), COMPANY CODE: 8563.  
in the name of (Shareholder(s) name):

Social Security #

(2) The Original was acquired by the deponent on or about

19, and was lost, stolen or destroyed on or about \_\_\_\_\_, 20 \_\_\_\_\_ under the  
following circumstances (State the circumstances in detail):

The Certificate was never received by us ; its  
whereabouts are not known.

(3) The Original (was/was not) endorsed. (If endorsed, describe the form of endorsement and state  
whether signature was guaranteed.)

not known.

(4) Deponent has made or caused to be made diligent search for the Original and has been unable to find  
or recover same, and that deponent was the unconditional owner of the Original at the time of loss,  
and is entitled to the full and exclusive possession thereof; that neither the Original nor the rights of  
deponent therein have, in whole or in part, been assigned, transferred, hypothecated, pledged or  
otherwise disposed of, in any manner whatsoever, and that no person, firm or corporation other than  
the deponent has any right, title, claim, equity or interest in, to or respecting the Original or the  
proceeds thereof, except as may be set forth in statement (5) following.

(5) If deponent's interest in the Original is in a representative or fiduciary capacity, indicate below the  
designation of such capacity; ie., administrator, executor, etc., and the title of the estate as follows:

Deponent is the \_\_\_\_\_ of the estate of \_\_\_\_\_  
 Specify name of any other persons having an interest in the Original. List them below and indicate the nature of their interest, such as heir, legatee, etc.

## NAME

## INTEREST

(6) Deponent makes this affidavit and agreement of indemnity for the purpose of inducing the Issuing Corporation and its agents to issue new securities in substitution for the Original and Technology Insurance Company to assume liability in respect thereof under its Lost Security Blanket Bond No. 98TLB0001.

(7) Deponent agrees that if said Original should ever come into deponent's hands, custody of power, deponent will immediately and without consideration surrender the Original to the Issuing Corporation, its transfer agents, subscription agents, trustees or Technology Insurance Company for cancellation.

(8) (Complete when market value of original exceeds \$100,000) Deponent represents that he owns real estate valued at \$ \_\_\_\_\_, mortgage for \$ \_\_\_\_\_, cash/securities \$ \_\_\_\_\_, salary \$ \_\_\_\_\_, other investments \$ \_\_\_\_\_, and estimated net worth \$ \_\_\_\_\_.

Bank-1 Name \_\_\_\_\_ City \_\_\_\_\_ Acct.# \_\_\_\_\_ Balance \_\_\_\_\_  
 \$ \_\_\_\_\_

Bank-2 Name \_\_\_\_\_ City \_\_\_\_\_ Acct.# \_\_\_\_\_ Balance \_\_\_\_\_  
 \$ \_\_\_\_\_

(Deponent certifies that the above is true and authorizes confirmation of bank balances and other information in this affidavit.)

(9) Deponent agrees, in consideration of Technology Insurance Company assuming liability or liability attaching under its Indemnity Bond in favor of the Issuing Corporation and its agents, the undersigned (jointly and severally, if more than one) hereby agree at all times to indemnify and save harmless Technology Insurance Company from and against any and all liabilities, losses, damages, judgements, costs, charges, counsel fees and expenses of every nature and character which they may sustain and incur by reason or on account of assuming liability attaching under its Indemnity Bond.

Signed, sealed and delivered by deponent this 22<sup>nd</sup> day of MAY, 2000

H. DESACHE

Signature of Deponent

PRESIDENT OF TENTATIVE

Social Security # DEVELOPPEMENTS A

State of \_\_\_\_\_

ss.:

County of \_\_\_\_\_

Subscribed and sworn to  
before me

Signature of Deponent

Social Security #

State of \_\_\_\_\_

ss.:

County of \_\_\_\_\_

Subscribed and sworn to  
before me

Je soussigné, M<sup>e</sup> Bernard CARVAIS,  
Notary Public  
Notaire à Paris-XVII<sup>e</sup>, 5, rue de Logelbach  
certifie exacte la signature ci apposée de

M<sup>e</sup> HERVE DESACHE  
Fait à Paris le 23.01.2000

Notary Public

